PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ALIENATION OF AFFECTIONS.

The Supreme Court of Rhode Island decides in *Angell* v. *Reynolds,* 58 Atl. 625, that the defendant in an action by a wife for alienation of the affections of her husband may, in mitigation of damages, show that the husband had been improperly familiar with other women during the period of defendant's illicit relations with him, though plaintiff was ignorant of this. See also *Bailey* v. *Bailey,* 94 Iowa, 598.

Mitigation of Damages

BANKRUPTCY.

In re Dauchy, 130 Fed. 532, the United States Circuit Court of Appeals (Second Circuit) decides that where a bankrupt conveys real estate by an absolute deed more than two years prior to the bankruptcy, in order to constitute a fraudulent concealment by failing to schedule the same, which will defeat the right to a discharge, objecting creditors must show that the bankrupt still retains a secret interest in the property. It is not sufficient that it may have been conveyed in fraud of creditors, but it must still be in fact the property of the bankrupt's estate. Compare the decision in *Hudson* v. *Mercantile Nat. Bank,* 119 Fed. 346.

Discharge: Concealment of Property

The United States Circuit Court of Appeals (Second Circuit) decides *In re C. Moench & Sons Co.,* 130 Fed. 685, that the fact that the property of a corporation is in the possession of receivers appointed by a state court does not affect the jurisdiction of a court of bankruptcy to adjudicate such corporation a bankrupt. The appointment of receivers for a manufacturing company and its ceasing to do business in consequence before the filing of a petition in bankruptcy

Manufacturing Corporations: Effect of Receivership

BANKRUPTCY (Continued).

against it do not, it is decided, deprive the court of jurisdiction to make the adjudication against it as a corporation engaged principally in manufacturing pursuits.

Preference: Deposit in Bank

The United States District Court (N. D. Iowa, W. D.) holds *In re Scherzer,* 130 Fed. 631, that the deposit of money in bank by an insolvent within four months prior to his bankruptcy, on open account, subject to check, does not constitute a transfer of property amounting to a preference under the Bankruptcy Act of 1898, although the bank may be at the time a creditor, and, under Section 68a, the bank has a right to apply the balance in such account as a set-off on its claim. Compare the decision of United States Supreme Court in *New York Nat. Bank* v. *Massey,* 192 U. S. 138.

Landlord's Lien

In re Hayward, 130 Fed. 720, the United States District Court (Eastern District of Pennsylvania) decides an interesting and practical point when it holds that a landlord, having a lien or charge for the rent due him on the property of his tenant at the time of the latter's bankruptcy, but the amount of which was unadjudicated, in order to preserve his rights to priority must establish his claim by proof under the Bankruptcy Act the same as other creditors.

BILLS AND NOTES.

Accommodation Note: Evidence

The United States Circuit Court for the Eastern District of Pennsylvania holds in *Earle* v. *Enos,* 130 Fed. 467, that a parol agreement by a bank, made at the time of the delivery of an accommodation note and its discount by the bank, that it would not look to the maker for payment, but solely to the person for whose accommodation the note was given, and that it will apply thereon collaterals belonging to such person, cannot be shown to defeat an action on the note, its effect being to vary the written contract. Compare *Gillespie* v. *Campbell,* 5 L. R. A. 698, and note thereto.

CARRIERS.

Delivery: Notice of Arrival

The Supreme Court of New Jersey, passing upon the general duties of a carrier of goods upon the arrival of the goods, holds in *Burr* v. *Adams Exp. Co.*, 58 Atl. 609, that where the contract of carriage contemplates delivery of the goods upon the carrier's premises at the terminus of the route, and no time for the arrival of the goods or for their delivery is stipulated for, the duty of making delivery to the consignee involves either the allowance to the consignee of a reasonable time within which to make inquiries respecting their arrival or else the duty on the part of the carrier of giving notice of arrival to the consignee; and also involves, in either case, the allowance to the consignee of a reasonable time and opportunity after notice of arrival of the goods within which to take them away. Compare *Norway Plains Co.* v. *Boston and Maine Railroad,* 1 Gray, 263.

CONSTITUTIONAL LAW.

Delegation of Legislative Powers

The local-option questions arising in connection with liquor legislation constantly give rise to cases respecting the delegation of legislative power. A new decision is found *In re McDonnell's License,* 58 Atl. 615, where the Supreme Court of Pennsylvania holds that the Act of April 28, 1889 (P. L. 68), repealing the Act of April 11, 1866 (P. L. 658), relating to the sale of intoxicating liquors in the limits of Potter County, and providing that the repeal should not go into effect unless a majority of the qualified voters of the county should vote in favor of said repeal, was not unconstitutional as delegation of legislative powers to the voters of such county. One judge dissents.

CONTRACTS.

Continuous Acts

An excellent discussion of the law relating to the enforcement of contracts requiring continuous acts occurs in the decision of the United States Circuit Court of Appeals (Third Circuit) in the case of *Western Union Telegraph Co.* v. *Pennsylvania Co.,* 129 Fed. 849. It is there held that if a contract is not revocable at the will of either party, or otherwise limited as to its duration, by its express terms, or by the inherent nature of the contract itself with reference to its subject-matter or its parties, it is pre-

CONTRACTS (Continued).

sumably intended to be permanent and perpetual in the obligation it imposes. The court further decides that a court of equity is not precluded from decreeing the specific performance of a contract because it is continuous in its operation, where the principal, if not the only, relief required is injunctive, to preserve the *status quo* which has existed between the parties for nearly fifty years, and to prevent the threatened termination of the contract by the defendant. For a note on the law herein involved see *Berlinger Gramaphone Co.* v. *Seaman,* 49 C. C. A. 103.

CORPORATIONS.

In *Fidelity Trust Co.* v. *Louisville Gas Co.,* 81 S. W. 927, the Court of Appeals of Kentucky decides that the fact that the charter of a gas company provided that it might issue bonds for $500,000, and execute a mortgage on its property to secure them, did not so limit the corporation's power to contract indebtedness as to prevent it from guaranteeing the payment of over $1,000,000 worth of bonds sold by it after it had lawfully acquired them in the conduct of the business for which it was organized.

Powers: Right to Guarantee Bonds

DEEDS.

The Supreme Court of Michigan decides in *Harris* v. *Roraback,* 100 N. W. 392, that a building designed and planned for two families, one to occupy the ground floor and one the second floor, each to have a separate entrance, violates the restriction in a deed of lots that they shall not be occupied except for "one dwelling-house to each lot." Compare the two cases of *Gillis* v. *Bailey,* 21 N. H. 149, and *Hutchinson* v. *Ulrich,* 145 Ill. 336.

Restriction as to Use of Lot

DIVORCE.

The vexed question of to what extent the court of one state is bound to recognize the divorce decree of another state seems still to give rise to difficulties in spite of the decisions by the Supreme Court of the United States in relation to this matter. Thus in *Davenport* v. *Davenport,* 58 Atl. 535, the Court of Chancery of New Jersey holds that a divorce decree granted in

Attack on Foreign Decree

DIVORCE (Continued).

another state of the United States will not be recognized in this state if it appears that in applying for such divorce the applicant fraudulently misstated or suppressed facts within his knowledge which would, if the truth were known or disclosed, have adversely affected the judgment rendered, or if it appears that the applicant knew where the defendant resided, and yet no actual notice of the pendency of such suit was given to such defendant. Compare *Atherton* v. *Atherton,* 181 U. S. 155.

ELECTION OF REMEDIES.

Conversion of Funds

In *Sweet* v. *Montpelier Sav. Bank and Trust Co.,* 77 Pac. 538, the Supreme Court of Kansas decides that where money has been wrongfully converted to the use of a corporation, and the assets of the corporation, by its insolvency, have come into the hands of a receiver, the following of the funds in the hands of the receiver as a trust fund does not preclude the maintaining of an action to recover against the parties by whose wrongful act the funds were converted, the two remedies not being inconsistent. Compare *Heidelbach* v. *National Park Bank,* 87 Hun. 117.

EQUITY.

Jurisdiction: Criminal Proceedings

The Supreme Court of Alabama decides in *Brown* v. *Mayor, etc., of City of Birmingham,* 37 Southern, 173, that the fact that threatened criminal prosecutions under an alleged void ordinance will inflict irreparable damage on the person threatened does not confer on courts of equity jurisdiction to enjoin such prosecutions at his instance. And it is further held that the threat of repeated and numerous criminal prosecutions under an alleged void ordinance affords no ground for injunctive relief, on the theory of preventing a multiplicity of suits.

EVIDENCE.

Dying Declarations

Dying declarations are statements of material facts concerning the cause and circumstances of a homicide made by the victim under a solemn conviction of impending death. Being a substitute for sworn testimony, they must be such narrative statements as would be admissible had the dying person been sworn as a witness.

EVIDENCE (Continued).

The statement, "That's all right; Bill Harris is my friend, and I don't want nothing done to him," is not admissible as a dying declaration. Supreme Court of Louisiana in *State* v. *Harris,* 36 S. 810. Compare *Adams* v. *People,* 47 Ill. 380.

GARNISHMENT.

Property Transferred to Debtor's Wife

A married woman, being the owner of stock in a national bank, transferred the same to her husband to enable him to qualify as a director in the bank on the understanding that as soon as he was elected director he should retransfer the stock. Under these facts the Court of Civil Appeals of Texas decides in *Citizens' Nat. Bank* v. *Sturgis Nat. Bank,* 81 S. W. 550, that though the arrangement resulted in an evasion of the federal statutes respecting the qualification of national bank directors, the husband held the stock in trust for his wife until retransferred, and that after the retransfer, though without a consideration, the stock was not subject to garnishment by a creditor of the husband's.

HUSBAND AND WIFE.

Curtesy in Separate Estate

In *Bingham* v. *Weller,* 81 S. W. 843, the Supreme Court of Tennessee decides that a deed from husband to wife, to her sole and separate use, discharged from all his control and liabilities, with full power in her to sell, convey, or mortgage, deprives him of the right to the estate by curtesy. The court admits that where such estate is created by a deed from a third person the usual holding is that the right of curtesy in the husband still exists. A different result, it is contended, should apply where the husband himself creates the estate, since otherwise the wife will be deprived of much of the benefit of the grant, and it is not to be presumed in favor of the grantor that an interest which may be conveyed is reserved, in the absence of express language. Compare the cases of *Fraser* v. *Hightower,* 12 Heisk. 94, and *Barnum* v. *LeMaster,* 75 S. W. 1045.

INJUNCTION.

Corporation: Who May Maintain Suit

In *Packard* v. *Thiel College of Evangelical Lutheran Church,* 58 Atl. 670, the Supreme Court of Pennsylvania decides that the Act of June 19, 1871 (P. L. 1360), giving courts power to restrain by injunction unlawful acts of corporations where the private rights of individuals are injured or invaded, does not permit inquiry at the instance of a private suitor as to the validity of a charter or as to its forfeiture; but where an act for the incorporation of a college provides that it shall be permanently located as it shall thereafter be determined by the trustees, and the trustees have permanently located the college at a particular place, persons who have contributed funds for its establishment in such place have a standing to maintain a suit to prevent its removal. Compare the former decision arising out of this controversy upon other facts in 56 Atl. 869.

JURISDICTION OF FEDERAL COURT.

Dissolution of Corporation

The interesting questions arising with regard to the application of state law in the federal courts to the adjustment of corporate rights are continually giving rise to important decisions. In *Jacobs* v. *Mexican Sugar Co.,* 130 Fed. 589, the United States Circuit Court (District of New Jersey) holds that a proceeding by a stockholder or creditor of a corporation for an injunction and the appointment of a receiver for the corporation as an insolvent under the New Jersey Corporation Act (P. L. 1896, p. 298, Sec. 65), which authorizes such proceeding in the Court of Chancery whenever a corporation shall become insolvent or suspend its ordinary business for want of funds, is one involving a money controversy, so as to that extent to be within the jurisdiction of the federal court, where diversity of citizenship exists and the requisite amount is in dispute. It is further decided that a suit by a stockholder of an insolvent corporation for the dissolution of the corporation and the winding up of its affairs is within the jurisdiction of a federal court of equity where such remedy is expressly given the stockholder by a state statute. See the note to *Republican Mountain Silver Mine* v. *Brown,* 7 C. C. A. 421.

LANDLORD AND TENANT.

In *Radey* v. *McCurdy,* 58 Atl. 558, the Supreme Court of Pennsylvania holds that where a tenant secured a new lease in the nature of an extension of the old lease, and the new lease contained no reservation of the right to remove trade fixtures attached to the land by the tenant, he may keep the fixtures on the premises without giving the landlord the right to restrain their removal at or before the expiration of the second lease. It will be remembered that many cases have held the contrary. The position taken by the Pennsylvania court is that "the law does not in strictness require of him that he shall remove them during the term, but only before he surrenders possession and during the time that he has a right to regard himself as occupying in the character of tenant." See *Penton* v. *Robart,* 2 East, 88.

Trade Fixtures

In *Lough* v. *John Davis & Co.,* 77 Pac. 732, the Supreme Court of Washington decides that the agent of a non-resident owner of a building, in complete charge thereof, and authorized to make repairs, was liable for injuries to the infant child of a tenant caused by the agent's negligent failure to repair a rotten and unsafe veranda railing. Questions arose in the case with regard to the scope of authority of the agent, and it is decided that where, in an action for injuries to the child of the tenant of a building against the agent of the non-resident owner, it was admitted that the agent had authority to rent the property and collect the rents, evidence that certain repairs had been made and paid for at the instance of such agent was admissible, as tending to show its authority to repair the defect in question. Compare *Wilcox* v. *Chicago, etc., R. Co.,* 24 Minn. 269.

Agent of Landlord: Authority

LARCENY.

It is decided by the Supreme Court of Pennsylvania in *Cochran* v. *Fox Chase Bank,* 58 Atl. 117, that where coupon bonds payable to bearer had been stolen and pledged to a bank in the ordinary course of business, without any circumstances putting the bank on inquiry, the bank took a good title thereto as against the true owner. The court refers to the change in attitude of the law with

Coupon Bonds

LARCENY (Continued).

respect to bonds. See in regard to this case *Gorgier* v. *Mieville*, 3 B. & C., 45, and *County of Beaver* v. *Armstrong*, 44 Pa. 63.

LIFE ESTATE.

A will devising land to a devisee directed that she should not sell or mortgage the same during life, but declared that she might rent it and use the rents, and provided that after her death the title should vest in her children and their heirs. Under these facts the Court of Civil Appeals of Texas decides in *Sprinkle* v. *Leslie*, 81 S. W. 1018, that the devisee took only a life estate, with remainder to her children, but that the restriction as to her power to alienate her interest was void. Compare *Simonton* v. *White*, 93 Tex. 50.

Restraints on Alienation

LOTTERIES.

The Court of Criminal Appeals of Texas holds in *McRea* v. *State*, 81 S. W. 741, that a lottery is a "scheme for the distribution of prizes by lot or chance, especially a gaming scheme in which one or more tickets bearing particular numbers draw prizes and the rest of the tickets are blank." It is therefore decided, applying this definition, that a knife-rack operated by defendant, consisting of an inclined table, with knives stuck therein, and so arranged that rings could be thrown on them, which rings defendant sold to customers who endeavored to ring the knives on the table, they being entitled to any knives rung or on which the rings caught, did not constitute a lottery.

What Constitutes

LUNACY.

The Supreme Court of Indiana, holding that the insanity of a client operates to terminate the relation of attorney and client, decides in *Chase* v. *Chase*, 71 N. E. 485, that where defendant in a lunacy inquisition was so insane at the time he employed certain attorneys to defend him that he was wholly oblivious to the fact, and incapable of knowing that his mental status was involved in the suit, the agreement conferred no authority on such attorneys to appear for the defendant at the trial or to prosecute an appeal from a decree finding defendant to be an insane person.

Attorneys

MUNICIPAL CORPORATIONS.

Assessments: Objections: Estoppel

The Supreme Court of Missouri (Division No. 2) decides in *Perkinson* v. *Hoolan,* 81 S. W. 407, that where a street improvement was constructed under an unconstitutional law, the fact that owners of property assessed therefor stood by in silence and permitted the work to be done without protest, did not preclude them from thereafter contesting the validity of the tax on that ground. Compare *Verdin* v. *St. Louis,* 131 Mo. 26.

PARENT AND CHILD.

Custody of Children

The situations in which the custody of children will be denied to parents and conferred upon more distant relatives seems not to be very clearly defined, and new decisions thereon are welcome. *In re Steele,* 81 S. W. 1182, the Kansas City Court of Appeals (Missouri) holds that a wife who was divorced for adultery and married her paramour after his wife had obtained a divorce was not, after her husband's death, entitled to the custody of her infant daughter as against respectable relatives of the husband who were financially able to care for the child. See *Kremelberg* v. *Kremelberg,* 52 Md. 553.

PLEDGES.

Mortgages: Foreclosure

The essential difference between a pledge and a mortgage, which in some respects are similar, gives rise to some interesting decisions. One of these occurs in the case of *Blood* v. *Shepard,* 77 Pac. 565, where the Supreme Court of Kansas decides that where choses in action, the payment of which is secured by a real estate mortgage, are pledged as collateral security for the payment of a debt, and such mortgage is foreclosed and title and possession taken thereunder, such title is vested in him, and is substituted for the pledged choses in action, and is governed by the law of pledges and not of mortgages. It is further held that in such case the pledgor is not entitled to have the pledgee's claim foreclosed as though it were a mortgage, but the pledgee is entitled to have his legal title quieted in such land if the pledgor fails after a reasonable time to pay the amount found due the pledgee.

RECEIVERS.

Appointment: Validity: Collateral Attack

The case of *Bowman* v. *Hazen*, 77 Pac. 589, presents an interesting discussion and decision in regard to the rights and liabilities of receivers. It is there held that an order of court appointing a receiver to take custody of property involved in litigation which was unwarranted and erroneous, but not absolutely void, is not open to collateral attack; but that the orders of a court, purporting to vest a receiver with the authority and control of property and funds not involved in the litigation in which the receiver was appointed, are absolutely void, and can be collaterally attacked at any time by any one in any proceeding where their validity is in issue. The court further decides that the receiver who takes such property and funds under the void orders without the consent and contrary to the wishes of the owner, and those who procure the orders to be made and co-operate with him in the wrongful seizure and appropriation, are all trespassers, and are liable for the property and funds so wrongfully taken with interest. Compare *In re Dill*, 32 Kans. 691.

RULE AGAINST PERPETUITIES.

Estate in Grantor

In *Middlesex Banking Co.*, 37 Southern, 139, the Supreme Court of Mississippi decides that a grantor who reserves out of the operation of his deed a legal life estate for himself cannot be counted as one of the donees within whose life the ultimate fee must vest in order to preserve the deed under the rule against perpetuities.

STOCK QUOTATIONS.

Property Therein: Illegal Transactions

The United States Circuit Court of Appeals (Seventh Circuit) holds in *Board of Trade of City of Chicago* v. *Kinsey Co.*, 130 Fed. 507, that even if it were true that a very large percentage of the contracts for the sale of commodities for future delivery made on an exchange were gambling transactions, such fact does not deprive the board of trade conducting the exchange of its property rights in the price quotations based on its sales, which are the same for the lawful as for the unlawful transactions. Compare note to *Sullivan Postal Telegraph Cable Co.*, 61 C. C. A. 2.

SURETYSHIP.

In *First Nat. Bank of Nashville* v. *National Surety Co.*, 130 Fed. 401, the United States Circuit Court of Appeals (Sixth Circuit) decides that when there are different bonds given by a bank official, covering different periods of time, with different sureties, an unappropriated payment made by the common principal is not always to be applied by the court to the oldest obligation. Regard must be had to the responsibility of the different sureties, as limited by the period for which they respectively contract, as well as to the injustice that would ensue if collections received under one obligation are applied to the discharge of a liability under a preceding or succeeding term, with distinct sureties. Compare *Gwynne* v. *Barnes*, 7 Clark & F. Rep. H. L. Cas. 571.

Bonds for Different Terms

WATERS AND WATER COURSES.

The Supreme Court of New Hampshire, holding in *Dolbeer* v. *Suncook Water Works Co.*, 58 Atl. 504, that a natural, fresh-water pond containing fifteen or more acres, though situated in the midst of and entirely surrounded by the land of a private person, is a large or great pond, the bed of which inside of high-water mark is public property, decides, nevertheless, that though a large or great pond so situated is public property, the owner of the land has a reasonable private right of using the water for domestic, agricultural, and mechanical purposes, and may build wharves and other structures into the pond for his own use to an extent that will not unreasonably interfere with the rights of the public in the pond, and as an incident of the ownership of the land on which a dam may be built to control the flow of water from the pond he has the right to a reasonable use of the pond for a reservoir.

Large or reat Pond